

[Oral argument date not yet scheduled]

No. 25-1004

**In the United States Court of Appeals
for the District of Columbia Circuit**

**UNITED STATES STEEL CORPORATION; NIPPON STEEL NORTH
AMERICA, INC.; and NIPPON STEEL CORPORATION,**

Petitioners,

v.

**THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED
STATES, ET AL.,**

Respondents.

**On Petition for Review of Actions of President Biden and of the
Committee on Foreign Investment in the United States**

**BRIEF OF *AMICI CURIAE* PENNSYLVANIA CHAMBERS OF
COMMERCE AND TRADE ORGANIZATIONS
(listed on following page)
IN SUPPORT OF PETITIONERS AND THE PETITION FOR
REVIEW**

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Pennsylvania Manufacturers' Association

Pittsburgh Technology Council

African American Chamber of Commerce of Western Pennsylvania

Mon Yough Area Chamber of Commerce

Fayette County Chamber of Commerce

Washington County Chamber of Commerce

Westmoreland County Chamber of Commerce

Greene County Chamber of Commerce

Beaver County Chamber of Commerce

**CERTIFICATE AS TO PARTIES, RULINGS,
RELATED CASES AND SEPARATE BRIEF, AND RULE 26.1
DISCLOSURES**

Pursuant to D.C. Circuit Rules 28(a)(1) and 29(d), the undersigned certifies the following:

A. Parties and Amici. Except for the following, all parties, intervenors, and amici appearing in this court are listed in the Brief for Petitioners or in other *amicus curiae* briefs:

Pennsylvania Manufacturers' Association
Pittsburgh Technology Council
African American Chamber of Commerce of Western
Pennsylvania
Mon Yough Area Chamber of Commerce
Fayette County Chamber of Commerce
Washington County Chamber of Commerce
Westmoreland County Chamber of Commerce
Greene County Chamber of Commerce
Beaver County Chamber of Commerce

B. Rulings Under Review. References to the rulings at issue appear in the Brief for Petitioners.

C. Related Cases. There are no related cases in this Court or in any other court.

D. Separate Brief. This separate brief is necessary because it conveys a perspective not captured in the briefs of the parties or any other *amicus curiae* briefs (to the undersigned's knowledge). *Amici* are

Pennsylvania chambers of commerce and trade organizations focused on promoting business and industry in their communities and/or the Commonwealth more generally. U. S. Steel provides significant economic and cultural benefits to the communities and industry groups that *Amici* represent. *Amici* are therefore uniquely positioned to address the effects that the U. S. Steel-Nippon Steel transaction will have on their communities' businesses, economies and workers, both if the transaction is completed and if it is not. *Amici* are not aware of any other *amicus curiae* briefs presenting *Amici's* unique perspective on the economic impact of the transaction, and counsel accordingly certifies pursuant to Circuit Rule 29(d) that joinder in a single brief with other *amici* would be impracticable.

E. Rule 26.1 Disclosure. Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rules 26.1 and 29(b), *amici curiae* Pennsylvania Manufacturers' Association, Pittsburgh Technology Council, African American Chamber of Commerce of Western Pennsylvania, Mon Yough Area Chamber of Commerce, Fayette County Chamber of Commerce, Washington County Chamber of Commerce, Westmoreland County Chamber of Commerce, Greene County Chamber

of Commerce, and Beaver County Chamber of Commerce each states that it has no parent company and no publicly held company has a 10% or greater ownership interest in it.

February 10, 2025

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GLOSSARY

“*Amici*” refers collectively to the *Amici Curiae* that are filing this brief.

“CFIUS” refers to the Committee on Foreign Investment in the United States.

“FY” refers to fiscal year.

STATUTES AND REGULATIONS

Applicable statutes and regulations are contained in the Addendum to the Brief of Petitioners.

**CONCISE STATEMENT OF IDENTITY OF *AMICI CURIAE* AND
SOURCE OF AUTHORITY TO FILE¹**

The Pennsylvania Manufacturers' Association, Pittsburgh Technology Council, African American Chamber of Commerce of Western Pennsylvania, Mon Yough Area Chamber of Commerce, Fayette County Chamber of Commerce, Washington County Chamber of Commerce, Westmoreland County Chamber of Commerce, Greene County Chamber of Commerce, and Beaver County Chamber of Commerce (collectively, "*Amici*") respectfully submit this *amici curiae* brief in support of Petitioners. *Amici* are Pennsylvania chambers of commerce and trade organizations dedicated to sustaining and promoting business and industry in Pennsylvania.

The Pennsylvania Manufacturers' Association is a nonprofit, statewide trade organization that represents the manufacturing sector in Pennsylvania's public policy process. The Association has served as a

¹ No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief, pursuant to electronic communications dated February 5, 2025. Counsel for *Amici* are preparing and submitting this brief *pro bono publico*.

consistent, principled leader for Pennsylvania's manufacturing and business interests for over a century. The Association's mission is to improve economic competitiveness by advancing pro-growth public policies that reduce the baseline costs of creating and keeping jobs in the Commonwealth.

The Pittsburgh Technology Council is the oldest and largest technology trade association in North America. Technology companies at all growth stages use the Council to build new business, connect to capital, grow and retain talent, and increase visibility. The Council aims not only to provide value to technology members, but also to move the Pittsburgh region forward through a sustainable, cluster-based approach to technology-driven economic development. The Council represents over 1,000 companies across the region. Its membership reflects a wide range of companies, from startups to Fortune 100 corporations. This diverse membership allows the Council to understand the interdependencies of building robust economies.

The African American Chamber of Commerce of Western Pennsylvania's mission is to promote access and business opportunities for small business owners and professionals throughout the Western

Pennsylvania region. In addition, the African American Chamber works to establish relationships with important organizations, institutions and people that lead the region's business sector. The Chamber believes that such relationships encourage the corporate community to help strengthen minority and small business owners.

The Mon Yough Area Chamber of Commerce is a business membership organization representing more than 30 communities along the Monongahela River to the southeast of Pittsburgh in Allegheny County, Pennsylvania. The Mon Yough Chamber is comprised of local business owners, executives, and individuals who believe strongly in the free enterprise system and their communities. Through bringing business and community together, the Mon Yough Chamber aims to sustain and enhance the region's prosperity. Three of the facilities that make up U. S. Steel's integrated Mon Valley Works – the Clairton, Edgar Thomson and Irvin Plants – are located in communities represented by the Mon Yough Chamber. As a historical hub for steel production in Southwestern Pennsylvania, for over a hundred years, the communities represented by the Mon Yough Chamber have been profoundly impacted by the shifting fortunes of the steel industry.

The Fayette County Chamber of Commerce is the largest and most active business advocacy, marketing, and workforce development organization in Fayette County, Pennsylvania. Fayette County is situated in Southwestern Pennsylvania, adjacent to Maryland and West Virginia. The members of the Fayette Chamber are principally small business owners employing fewer than ten employees and professionals, with approximately 20% of members representing larger community organizations and 10% of members not employed by a for-profit business. Fayette County has vast natural quantities of rich metallurgical coal, which helped to fuel the rise of the steel industry in the region. Like other counties in Southwestern Pennsylvania, Fayette County's economy suffered greatly when the steel industry collapsed in the 1980s.

Initially founded in 1911, the Washington County Chamber of Commerce is the largest business association in Washington County, Pennsylvania and the largest Chamber of Commerce in Southwestern Pennsylvania. Washington County is located to the south and west of Allegheny County, Pennsylvania (the home of Pittsburgh). Historically, coal and steel have been major industries in Washington County. The Washington Chamber has more than 1,100 members, from small

businesses to Washington County's largest employers. The Washington Chamber's goals include encouraging the growth of existing businesses and industries, providing assistance to new firms or individuals, and advocating legislative and political actions beneficial to the business or general community.

The Westmoreland County Chamber of Commerce strives to serve and support the well-being and success of business in Westmoreland County, Pennsylvania. Westmoreland County is situated immediately to the south and east of Allegheny County. By supporting the existing business community and promoting new business, the Westmoreland Chamber seeks to improve the common good and quality of life in Westmoreland County, as well as provide cultural, social, and economic education to its citizens. Around the turn of the twentieth century, aluminum and specialty steel mills became important economic drivers for Westmoreland County. However, with the decline of steel in the late twentieth century, healthcare, manufacturing, retail, education and small businesses began to lead the County's economy.

The Greene County Chamber of Commerce is a champion for the business community of Greene County, Pennsylvania. Its mission is to

provide services and programs that will increase the success of member businesses and organizations, as well enhance the economy and quality of life in the County. Greene County, Pennsylvania is situated in the southwestern corner of Pennsylvania, approximately 60 minutes from downtown Pittsburgh by car. The Greene Chamber has been in existence for 123 years and currently has 357 members. Historically, Greene County has developed its economic base through agriculture and coal mining.

The Beaver County Chamber of Commerce's mission is to lead and advocate for economic growth and community vitality, through collaboration, networking and education. The Beaver Chamber collaborates with all industries, including small and large businesses and many nonprofit organizations. Beaver County, Pennsylvania is located immediately northwest of Allegheny County along the border of Ohio and the West Virginia panhandle. Steel was Beaver County's dominant industry before its collapse in the 1980s.

Amici have a substantial interest in the issues presented here. For *Amici* and members of their business communities, CFIUS's² review of the transaction between U. S. Steel and Nippon Steel, and President Biden's pre-determined decision to block such transaction, are not academic. Rather, whether or not the transaction is permitted to close will have a direct and serious impact on precisely those Pennsylvania workers and businesses whose economic interests *Amici* strive to advance, particularly those in the Southwestern Pennsylvania communities where U. S. Steel operates.

Nippon Steel has pledged significant investment in Pennsylvania and has further pledged to preserve production and keep U. S. Steel's corporate headquarters in Pittsburgh. Such investment, combined with Nippon Steel's resources and advanced technological know-how, would significantly advance the economic interests of the business communities and industry groups that *Amici* represent.

Conversely, without the investment and other commitments Nippon Steel has pledged, it is almost a foregone conclusion that U. S.

² "CFIUS" refers to the Committee on Foreign Investment in the United States.

Steel will disappear from Southwestern Pennsylvania. Along with it will go thousands of jobs and billions of dollars of economic impact. These losses will adversely affect Pennsylvania businesses and workers far beyond the immediate communities in which U. S. Steel's offices and facilities are located, although those communities would surely be impacted the most. Many of the communities represented by *Amici* are no strangers to the devastating economic consequences of industrial decline and have spent decades trying to rebuild their business communities and populations following the collapse of industry in the 1980s. *Amici* are deeply invested in ensuring that another collapse (this one wholly unnecessary) is not forthcoming – and the ***only*** way to do that is for Nippon Steel to acquire U. S. Steel.

SUMMARY OF ARGUMENT

Amici strive to promote and support Pennsylvania's business community and economic vitality. In furtherance of their objectives, *Amici* write in support of Petitioners U. S. Steel and Nippon Steel and ask the Court to vacate CFIUS's actions and President Biden's Order blocking Nippon Steel's proposed acquisition of U. S. Steel.

U. S. Steel has made abundantly clear that, if the transaction with Nippon Steel is not completed, U. S. Steel will disappear from Pennsylvania and could very well be broken apart and sold for scrap. *Amici* want nothing more than to avoid this scenario, one that can easily be prevented by permitting the transaction to close. U. S. Steel has been a part of Southwestern Pennsylvania since its founding 124 years ago, and its significance to the region's economy, workers and culture cannot be overstated.

Nippon Steel has made a number of binding commitments that would benefit the business communities and industries that *Amici* represent. For example, Southwestern Pennsylvania communities would derive tremendous economic benefit from Nippon Steel's pledges to invest at least \$1 billion in Southwestern Pennsylvania facilities, keep its

corporate headquarters in Pittsburgh, and preserve current levels of steel production. Conversely, prohibiting the transaction would cause immeasurable, irreparable economic harm in the Commonwealth. In this manner, consistent with the closeness of the U.S.-Japan relationship, *Amici* view Nippon Steel as a lifeline for Pennsylvania's business and economic interests, not a threat to national security.

ARGUMENT

On March 14, 2024, President Biden issued the following statement on U. S. Steel, prior to any CFIUS review:

It is important that we maintain strong American steel companies powered by American steel workers. I told our steel workers I have their backs, and I meant it. U. S. Steel has been an iconic American steel company for more than a century, and it is vital for it to remain an American steel company that is domestically owned and operated.³

True to this announcement of his determination, President Biden eventually signed an order blocking the transaction between U. S. Steel and Nippon Steel in early January 2025.⁴

President Biden's March 14, 2024 statement and subsequent block evince a woeful lack of concern for Pennsylvania's workers, businesses and communities, particularly the Pennsylvania communities in which U. S. Steel operates and whose economies and workforce depend on U. S. Steel. Pennsylvania's businesses and economy will not suffer merely because U. S. Steel's ultimate parent company happens to be a privately-

³ App.7 (Statement from President Biden on US Steel).

⁴ See App.11 (Remarks by President Biden on New Actions to Protect U.S. Steel and Shipbuilding Industry from China's Unfair Practices (Apr. 17, 2024)).

owned Japanese company.⁵ To the contrary, Nippon Steel's resources, investment and advanced technologies will be a boon to Pennsylvania's business communities, industries and workers. What will cause harm to Pennsylvania communities, industries and workers is U. S. Steel shuttering its remaining Pennsylvania steelmaking operation, Mon Valley Works, and relocating its corporate headquarters and research and development facilities away from the Commonwealth – and this is exactly what will occur if the transaction does not close.

Amici support and agree with Petitioners' arguments and conclusions, including the conclusion that the transaction poses no genuine threat to national security. *Amici* will not repeat those arguments and conclusions in this brief. Rather, the purpose of this brief is to provide region-specific context detailing U. S. Steel's importance to

⁵ See App.416 ("Third-Party Statements Regarding the Transaction," (quoting Clark Packard, Research Fellow at the Cato Institute, in Nikkei Asia, "Nippon Steel Sends Delegation to Washington to Gauge U.S. Steel Deal," as stating, "It is pretty clear that Japan does not pose any national security risk to the United States" and "It's not like Nippon Steel is a state-owned steel company in China. It's a privately owned company in Japan and the U.S. should welcome all kinds of investment from Japan.")).

Pennsylvania and the impact of the transaction on Pennsylvania's economy if it succeeds, and if it does not.

I. U. S. STEEL HAS BEEN VITAL TO SOUTHWESTERN PENNSYLVANIA FOR OVER A CENTURY.

U. S. Steel's historical footprint in Southwestern Pennsylvania dates back to 1872, when Andrew Carnegie broke ground on his first steel mill. Mr. Carnegie sold his Carnegie Steel Company to form U. S. Steel in 1901. Ever since, U. S. Steel has been part of the region's fabric. U. S. Steel's facilities have employed generations of Southwestern Pennsylvanians, and communities emerged on the back of steel.

Today, monuments to steel's past and present abound in the region. Carnegie Libraries and Museums are valuable community and cultural institutions. The Carrie Blast Furnaces in Swissvale, Pennsylvania – formerly part of U. S. Steel's Homestead Works – is a national historic landmark that hosts festivals, concerts, and other events. The organization Rivers of Steel exists to showcase the artistry and innovation of Southwestern Pennsylvania's industrial heritage. And for many, the Pittsburgh Steelers are a symbol of a culture and way of life, not just a football team.

The economic and cultural significance of U. S. Steel and steelmaking to Southwestern Pennsylvania cannot be exaggerated. While U. S. Steel's production has fallen from its 1950's peak, and the company's business has changed dramatically, it remains the third largest steel producer in the United States and a mainstay of the Pennsylvania business community. The 64-story U. S. Steel Tower in downtown Pittsburgh, naturally built with the company's steel, has been the corporate headquarters of U. S. Steel since its completion in 1971. Fifty-four years later, the U. S. Steel Tower remains the tallest building in Pittsburgh. U. S. Steel also maintains its administrative and information technology functions in the City of Pittsburgh and operates a cutting-edge research and development facility within ten miles of the City.⁶

In addition to hosting U. S. Steel's corporate, administrative and research facilities, Pennsylvania is home to an integrated steelmaking operation, Mon Valley Works. Mon Valley Works consists of four separate, yet interrelated, facilities: Clairton Plant, Edgar Thomson

⁶ United States Steel, Locations: U. S. Steel's Footprint, <https://www.ussteel.com/about-us/locations>.

Plant, Fairless Plant and Irvin Plant. The steel produced at Mon Valley Works is used in industries as diverse as home appliance creation, automotive manufacturing, and metal building construction.⁷

The Clairton Plant is the largest producer of coke and coal chemicals in the United States. Coke is the fuel that blast furnaces use to convert iron ore into liquid iron.⁸ Located in Clairton, Pennsylvania, 20 miles south of Pittsburgh on the west bank of the Monongahela River, the Clairton Plant was built in 1901 and acquired by U. S. Steel in 1904.⁹ Mon Valley Works' Edgar Thomson Plant and Irvin Plant cannot produce steel without the coke produced at the Clairton Plant.¹⁰ The Edgar Thomson Plant uses Clairton's metallurgical coke as a raw material in its blast furnaces, while both plants use Clairton's coke oven gas as a

⁷ See U.S. Steel, Made in Pennsylvania, October 2023, <https://www.ussteel.com/documents/40705/4880602/Made+in+Pennsylvania+2023+-+Final.pdf/827c7806-2287-2b34-6093-c17147cbfc2c?t=1698605791121>.

⁸ See *id.*

⁹ United States Steel Corporation, 2023 Mon Valley Works Clairton Plant Operations and Environmental Report, at 6, available at <https://www.ussteel.com/documents/40705/71641/USS+Clairton+Works+Operations+Environmental+Report+2023.pdf/a87cc105-0ea8-5803-e5ab-99cebb28b267?t=1717002328299>.

¹⁰ *Id.*

clean fuel.¹¹ In addition, due to its size and capacity, the Clairton Plant supports thousands of steel plant, chemical energy, transportation, and supplier jobs both in Southwestern Pennsylvania and across the United States.¹²

The Edgar Thomson Plant, located in Braddock, Pennsylvania approximately 10 miles southeast of Pittsburgh, was Andrew Carnegie's first steel mill and has been operational for nearly 150 years. The Edgar Thomson Plant is where Mon Valley Works' basic steel production occurs, meaning that raw materials (including coke from the Clairton Plant) are combined in a blast furnace to generate liquid iron, which is then refined into steel slabs.¹³

The Irvin Plant was first opened in 1938 and is located in West Mifflin, Pennsylvania, about 13 miles southeast of Pittsburgh along the Monongahela River. The Irvin Plant rolls and treats steel slabs produced at the Edgar Thomson Plant.¹⁴ Major products manufactured at the Irvin

¹¹ *Id.* at 7.

¹² *Id.* at 6.

¹³ United States Steel, Locations: U. S. Steel's Footprint, <https://www.ussteel.com/about-us/locations>.

¹⁴ *Id.*

Plant include hot-rolled, cold-rolled, and coated sheet, as well as products that have special applications requested by customers.¹⁵

Last, the Fairless Plant has been in operation since 1952 and is located in Fairless Hills, Pennsylvania, about 25 miles northeast of Philadelphia. The Fairless Plant is a finishing facility where cold-rolled products from the Irvin Plant are turned into galvanized sheet. Products from the Fairless Plant primarily serve customers in the appliance, automotive, metal building, and home construction industries.¹⁶

These Pennsylvania operations have a tremendous economic impact, a significant proportion of which is felt in *Amici's* business communities. Specifically, U. S. Steel's operations in Pennsylvania had a total economic impact \$3.6 billion in Fiscal Year ("FY") 2022.¹⁷ This economic impact included \$2.1 billion that U. S. Steel paid to 881

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ United States Steel, U. S. Steel and Pennsylvania, available at: <https://www.ussteel.com/documents/40705/4880602/USS+PA+Economic+Impact+Study.pdf/1ca6c391-47c5-9c90-fe65-cd6a6d5f3d4c?t=1698605910473> [hereinafter, "U. S. Steel and Pennsylvania"].

Pennsylvania suppliers.¹⁸ In FY 2022, U. S. Steel employed over 3,700 people in Pennsylvania, mostly in the Pittsburgh region, and supported and sustained an estimated 11,417 Pennsylvania jobs by its operations and purchases from the local supply chain.¹⁹ In addition, U. S. Steel generated \$138.2 million in state and local taxes due to its operations and capital spending.²⁰

The failure of the transaction between U. S. Steel and Nippon Steel could well be the death knell for steelmaking in Southwestern Pennsylvania. *Amici* wholly agree with Petitioners that U. S. Steel's transaction with Nippon Steel is the best – and quite possibly the only – way to keep U. S. Steel and its attendant economic benefits in Southwestern Pennsylvania. U. S. Steel has immense economic and cultural significance for *Amici's* business communities. The loss of U. S. Steel would be deeply felt by communities and workers in Southwestern Pennsylvania, many of which have spent decades struggling to persevere

¹⁸ U. S. Steel, Made in PA (Oct. 2023), available at: <https://www.ussteel.com/documents/40705/4880602/Made+in+Pennsylvania+2023+-+Final.pdf/827c7806-2287-2b34-6093-c17147cbfc2c?t=1698605791121>.

¹⁹ U. S. Steel and Pennsylvania, *supra* note 17.

²⁰ *Id.*

in the face of industrial decline. For *Amici's* business communities, the location of U. S. Steel's parent company does not matter. What matters is that U. S. Steel – a hallmark of Pennsylvania industry, a provider of good jobs, and a supplier to other important industries – does not disappear from the Commonwealth, particularly when it could instead grow to new heights while remaining headquartered in Pittsburgh.

II. PENNSYLVANIA'S BUSINESSES, ECONOMY AND WORKERS WILL BENEFIT TREMENDOUSLY IF THE U. S. STEEL/NIPPON STEEL TRANSACTION SUCCEEDS.

The U. S. Steel/Nippon Steel transaction will promote the ongoing success of Pennsylvania's businesses, economy, and workers. No other available option will ensure that steelmaking continues in Southwestern Pennsylvania or protect the more than 11,000 Pennsylvania jobs and \$3.6 billion in economic activity that depend on U. S. Steel.²¹

As part of the transaction, U. S. Steel and Nippon Steel have offered to enter into a national security agreement with CFIUS that contains legally binding commitments enforceable by CFIUS.²² These

²¹ Becky Corbin, D.C. Journal, "Swampy Steel Politics Is a Bad Election Year Play" (Apr. 3, 2024), <https://dcjournal.com/swampy-steel-politics-is-a-bad-election-year-play/>.

²² App.517, 520 (Email to Andrew Fair (Dec. 17, 2024) Re: CFIUS Case 24-254: Response to Letter of December 14, 2024, at 1, 4).

commitments would directly sustain and promote Pennsylvania business and economic vitality.²³ Specifically, U. S. Steel and Nippon Steel have pledged to:

- (1) maintain U. S. Steel as a standalone company headquartered in Pittsburgh, Pennsylvania;
- (2) make necessary, significant investment in U. S. Steel's blast furnace facilities in Western Pennsylvania;
- (3) keep U. S. Steel's production and jobs in Pennsylvania;
- (4) maintain and enhance U. S. Steel's production capacity in the United States and supply to the U.S. market; and
- (5) transfer advanced steelmaking technologies to make U. S. Steel's steel production more efficient, which would enable it to compete more effectively, improve product quality, enhance operating effectiveness, and reduce carbon emissions.²⁴

Nippon Steel's investments in Pennsylvania would include "[a]t least \$1 billion to enhance the competitiveness of the Mon Valley Works, including improving yield, increasing energy efficiency, improving product quality, and enhancing overall operating effectiveness, and

²³ ECF Doc. 2098074 at 18-19 (Br. of Pet'rs at 7-8).

²⁴ App.335-36 (Email to Andrew Fair re: CFIUS Case 24-088: Response to Risk Letter of August 31, 2024 at 4-5). *See also* App.529 (Encl. 1 – Resp. to Text of Dec. 14 Letter at 9 (Nippon Steel's specific plans include to operate and/or maintain, *inter alia*, the Irvin Plant (besides the hot mill); the Clairton Plant's coke operations; and the blast furnaces, basic oxygen furnaces and casters at the Edgar Thomson Plant)).

upgrading or replacing Mon Valley Works' circa 1938 hot strip mill.”²⁵ In fact, Nippon Steel has committed to invest at least \$1.4 billion (with the total currently expected to reach \$1.6 billion) in United Steelworker-represented facilities, “beyond repair and maintenance,” and above and beyond what is required in the basic labor agreement between United Steelworkers and U. S. Steel.²⁶

In recent decades, U. S. Steel has been forced to shutter production facilities, not because of foreign ownership, but because of a lack of investment and capital.²⁷ Against this backdrop, Nippon Steel's committed investments are critical to the future of Mon Valley Works. One of the four facilities that comprises Mon Valley Works, the Irvin Plant hot strip mill in West Mifflin, Pennsylvania, dates back to 1938.²⁸

²⁵ App.335 (Email to Andrew Fair Re: CFIUS Case 24-088: Resp. to Risk Letter of Aug. 31, 2024 at 4); *see also* App.369 (Nippon Steel Incentives to Maintain U.S. Domestic Production at 5); App.534-35 (Encl. 2 – Resp. to Annex of Dec. 14 Letter at 1-2).

²⁶ App.346 (U.S. Steel – Nippon Steel National Security Agreement Term Sheet § III(2)); App. 523 (Encl. 1 – Resp. to Text of Dec. 14 Letter at 3); App.534-35 (Encl. 2 – Resp. to Annex of Dec. 14 Letter at 1-2).

²⁷ App.534 (Encl. 2 – Resp. to Annex of Dec. 14 Letter at 1).

²⁸ *See* The Pittsburgh Press, “An Aerial View of New Irvin Works North of Clairton” (Nov. 21, 1938), available at <https://news.google.com/newspapers?id=LG0jAAAAIIBAJ&sjid=JkwEAAAIIBAJ&pg=3973,4938970>.

Absent necessary upgrades (which will only be possible through Nippon Steel's investment), it is inevitable that the Irvin Plant will not be able to satisfy the requirements of the modern-day automotive and oil and gas industries, and will eventually be forced to shutter. This would likely result in the idling of Mon Valley Works as a whole, not merely the hot strip mill. The transaction between U. S. Steel and Nippon Steel is accordingly the **only** path forward that assures the future of Mon Valley Works and, in turn, the survival of steelmaking and related jobs in the Pittsburgh region.²⁹

Beyond merely preserving the *status quo*, Nippon Steel's planned investment would have an immense, positive economic impact for Pennsylvania. The \$1 billion investment is expected to include expenditures of approximately \$400 million on equipment and \$600 million on construction costs.³⁰ Per a recent Economic Impact Analysis

²⁹ App.337 (Email to Andrew Fair Re: CFIUS Case 24-088: Resp. to Risk Letter of Aug. 31, 2024 at 6).

³⁰ Parker Strategy Group, *Projected Economic Impact of \$1 Billion Investment by Nippon Steel Corporation into U. S. Steel's Southwestern Pennsylvania Operations* (Oct. 1, 2024), [hereinafter "Parker Economic Impact Projection"] at 1, 3, available at https://cdn.prod.website-files.com/657c753df917ef83a31f840c/66fc05b87585008fb2a1f212_Nippon%20Steel%20%241B%20Investment%20PA%20Economic%20Impact%20Study.pdf.

prepared by Parker Strategy Group, an independent third party based in Philadelphia,³¹ a \$600 million direct spend on construction for Mon Valley Works would, over two years, generate a total economic impact in Pennsylvania of \$714.7 million,³² increase the total market value of all final goods and services produced within the region by \$364 million, create 3,648 new jobs, and result in state and local tax revenue of \$28.7 million, assuming 60% of construction expenditures are made in Pennsylvania.³³ In the event that 100% of construction expenditures are made in Pennsylvania, those figures are projected to rise to a total economic impact of \$1.2 billion, added market value of \$606.7 million, 6,080 new jobs, and increased tax revenues of \$47.9 million over two years.³⁴ Moreover, in the short term, Nippon Steel has committed to pay all United Steelworkers-represented U. S. Steel employees and eligible

³¹ Parker Strategy Group, <https://www.parkerstrategygroup.com/services>.

³² Total economic impact is the sum of direct, indirect, and induced impact. It includes spending on operations, capital expenditures, labor income expenditures, and value added to the economy as a result of U. S. Steel's expenditures.

³³ Parker Economic Impact Projection, *supra* note 30, at 1, 4, 8.

³⁴ *Id.* at 1, 4, 6.

non-represented employees a \$5,000 bonus if the transaction closes.³⁵ These bonuses would provide a direct financial benefit to Pennsylvania workers and inject money into their communities.

In this manner, Nippon Steel's investment in Mon Valley Works will have a far-reaching, positive impact on Pennsylvania communities, businesses, and workers, including those both inside and outside the steel industry.³⁶ Investment will bring jobs and economic activity to *Amici's* communities, industries and regions, which in turn will spur business development and bring new customers and capital to existing businesses.³⁷ As Becky Corbin, former member of the Pennsylvania House of Representatives, noted, the transaction with Nippon Steel "should be seen as a boon for Pennsylvanians, as well as the more than

³⁵ U.S. Steel, "U.S. Steel Employees to Host U. S. Steel Employees to Host Rally at Mon Valley Works Clairton Plant to Fight for their Futures in Support of Nippon Steel Transaction" (Dec. 12, 2024), <https://investors.ussteel.com/news-events/news-releases/detail/704/u-s-steel-employees-to-host-rally-at-mon-valley-works>.

³⁶ See Parker Economic Impact Projection, *supra* note 30.

³⁷ See, e.g., App.337 (Email to Andrew Fair, Re: CFIUS Case 24-088: Response to Risk Letter of August 31, 2024, at 6) (many union representatives and workers "believe that these investments will be transformative to the communities in Pennsylvania's Mon Valley"); App.384-85 ("Third-Party Statements Regarding the Transaction," (quoting Jennifer Safavian)); App.395 (*id.* (quoting Phil Kerpen)).

11,000 jobs and \$3.6 billion in economic activity supported by U. S. Steel in the state.”³⁸ Ms. Corbin pointed out that not only would U. S. Steel’s headquarters remain in Pittsburgh, but also that Nippon Steel would relocate its own American subsidiary’s headquarters, currently in Houston, to Pittsburgh.³⁹

The inflow of capital Nippon Steel would provide would be a welcome reprieve to many communities in Southwestern Pennsylvania, including those in counties where *Amici* Chambers of Commerce are based. Such communities suffered tremendously from the decline of industry in the last decades of the twentieth century.⁴⁰ As industry

³⁸ Becky Corbin, D.C. Journal, “Swampy Steel Politics Is a Bad Election Year Play” (Apr. 3, 2024), available at <https://dcjournal.com/swampy-steel-politics-is-a-bad-election-year-play/>; United States Steel, “U. S. Steel’s Operations in Pennsylvania Generated \$3.6 Billion in Economic Impact” (Oct. 30, 2023), available at <https://investors.ussteel.com/news-events/news-releases/detail/652/u-s-steels-operations-in-pennsylvania-generated-3-6#:~:text=U.%20S.%20Steel%27s%20operations%20in%20Pennsylvania%20supported%20an%20estimated%2011%2C417%20jobs,indirect%20F%20induced%20in%20F>.

³⁹ *Id.*; see also, e.g., App.398 (“Third-Party Statements Regarding the Transaction” (quoting the *Pittsburgh Post-Gazette* Editorial Board, “Stop Pandering to Pittsburgh: Politicians Should Drop Opposition to Nippon Steel” (March 21, 2024))).

⁴⁰ See, e.g., App.393-94 (“Third-Party Statements Regarding the Transaction” (quoting T.J. Rooney as stating, “U.S. Steel has lost nearly 90% of its workforce in the region over the last 40 years and may very

collapsed, jobs disappeared, as did supporting business and commercial zones that catered to industry employees. People were forced to search for economic opportunities elsewhere, causing the populations of these communities to plummet from their peak. For many communities, the population has never recovered, making it a challenge for prospective and existing businesses to continue operating in those communities. For example, the population of Clairton, Pennsylvania – located 15 miles southeast of Pittsburgh and home to U. S. Steel’s Clairton Plant – has declined from 19,418 in 1950 to 5,949 in 2023.⁴¹ Nippon Steel’s significant investment would ensure that the *Amici’s* communities and

well continue to shed more of it without a major injection of capital.”)); App.410 (*id.* (quoting Coalition of Free-Market, Conservative, and Individual Liberty Organizations as stating the transaction with Nippon Steel would be “a big improvement over a status quo where the American steel industry lost workers nearly every year since World War II.”)).

⁴¹ U.S. Dept. of Commerce, 1950 Census of Population Preliminary Counts: Population of Pa., by Counties Apr. 1, 1950, available at <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www2.census.gov/library/publications/decennial/1950/pc-02/pc-2-46.pdf&ved=2ahUKEwj9-Mi-uLKLAXsElkFHZoTFuYQFnoECBMQAQ&usg=AOvVaw0sC5h168YYJ-GXLNqz2-Cd>; United States Census Bureau, QuickFacts: Clairton city, Pennsylvania, <https://www.census.gov/quickfacts/fact/table/clairtoncitypennsylvania/PST045223#PST045223>.

regions do not endure a second period of industrial decline – this one inflicted by the unjustified stroke of a pen.

The transaction would also ensure U. S. Steel’s ongoing corporate, administrative and research and development presence in Southwestern Pennsylvania. As indicated above, Nippon Steel has committed to keeping U. S. Steel’s corporate headquarters in downtown Pittsburgh. The presence of U. S. Steel and its corporate employees in downtown Pittsburgh helps to promote a thriving downtown community and to direct traffic to local businesses those employees patronize, such as retail shops and restaurants. If the transaction closes, such benefits would not only continue, but they would also grow, as Nippon Steel would relocate its current American subsidiary’s headquarters to Pittsburgh from Houston.

Similarly, Nippon Steel has recently announced that it “plans to create a workforce training center with a multi-million dollar grant to support workforce development in Western Pennsylvania” following the closing of the transaction.⁴² This center would “partner with local

⁴² See News Release, U.S. Steel to Fund Training Center with Multi-Million-Dollar Grant Following Close of Transaction with Nippon Steel

universities, colleges, trade schools and economic development organizations to train the workforce of tomorrow.”⁴³ However, the center – which would be a boon to the region’s workers and promote the development of a workforce ready to confront the challenges of modern business and industry – is only possible with investment from Nippon Steel if the transaction is permitted to close.⁴⁴

Further, with the benefit of Nippon Steel’s resources, investment, and technological know-how, U. S. Steel’s Research & Technology Center in Munhall, Pennsylvania, approximately ten miles east of downtown Pittsburgh, could become the preeminent home to steelmaking research and development in Pennsylvania and perhaps the country. The Center, which is located on the former site of U. S. Steel’s historical Homestead Steel Works, is a world-class facility where “academic scientists, leading experts from across the steel industry, and customers come together to apply advanced technology to premier solution development.”⁴⁵ Nippon

(Jan. 2, 2025), <https://investors.ussteel.com/news-events/news-releases/detail/707/u-s-steel-to-fund-training-center-with>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ United States Steel, Locations: U. S. Steel’s Footprint, <https://www.ussteel.com/about-us/locations>.

Steel's research and development expenses are over *twelve times* U. S. Steel's research budget (approximately \$500 million compared to \$40 million).⁴⁶ Nippon Steel has committed to transferring its highly advanced technologies to U. S. Steel following the acquisition and has announced:

As a result of the Transaction U. S. Steel and all of its facilities will directly benefit from Nippon Steel's significant R&D efforts (~\$500M annual spend), its global expertise, world-leading blast furnace know-how, and strong financial position. This includes sharing Nippon Steel's COURSE50 technology (currently proven to reduce carbon emissions by 33% in a test blast furnace) and progress on carbon capture and storage technologies, among other environmental benefits with U. S. Steel... From the outset, we have been clear in our admiration for the entire U. S. Steel portfolio and our desire to provide investment and technical expertise to protect and grow U. S. Steel as one of the world's best steelmakers with world-leading capabilities.⁴⁷

⁴⁶ Nippon Steel Corporation, News Release, "Nippon Steel Announces Transformative Investments at U. S. Steel's Mon Valley Works and Gary Works" (Aug. 29, 2024), https://www.nipponsteel.com/en/news/20240829_100.html; Bob Tita, Wall Street Journal, "With \$14 Billion U.S. Steel Deal in Limbo, Nippon Steel Seeks Community Support" (May 25, 2024), <https://www.wsj.com/business/deals/with-14-billion-u-s-steel-deal-in-limbo-nippon-steel-seeks-community-support-76abc6fb>.

⁴⁷ Nippon Steel Corporation, News Release, "Nippon Steel Announces Transformative Investments at U. S. Steel's Mon Valley Works and Gary

Consistent with such statement, one commentator observed, the transaction would permit U. S. Steel to “adopt [Nippon Steel’s] cleaner technologies, enjoy deeper pockets for innovation, and revitalize Pittsburgh’s steel industry – this time, as the sustainable steel capital of the world.”⁴⁸

III. PROHIBITING THE TRANSACTION WOULD HAVE A DEVASTATING IMPACT ON PENNSYLVANIA’S ECONOMY, BUSINESS COMMUNITY AND WORKERS.

The loss of U. S. Steel would have a devastating economic impact on Southwestern Pennsylvania’s business communities, including those represented by *Amici*. Without U. S. Steel, billions of dollars of economic value would disappear from the Commonwealth.⁴⁹ Less money would flow and be available to the business communities of Southwestern

Works” (Aug. 29, 2024), https://www.nipponsteel.com/en/news/20240829_100.html.

⁴⁸ Ethan Brown, RealClear Energy, “A U.S. Steel/Nippon Deal Would Make Pittsburgh a Sustainable Steel Leader” (Apr. 26, 2024), https://www.realclearenergy.org/articles/2024/04/26/a_us_steelnippon_deal_would_make_pittsburgh_a_sustainable_steel_leader_1027861.html.

⁴⁹ See United States Steel, “U. S. Steel’s Operations in Pennsylvania Generated \$3.6 Billion in Economic Impact” (Oct. 30, 2023), available at <https://investors.ussteel.com/news-events/news-releases/detail/652/u-s-steels-operations-in-pennsylvania-generated-3-6#:~:text=U.%20S.%20Steel%27s%20operations%20in%20Pennsylvania%20supported%20an%20estimated%2011%2C417%20jobs,indirect%2FInduced%20in%20F>.

Pennsylvania, to the detriment of local businesses. Moreover, thousands of Pennsylvanians would lose their jobs.⁵⁰ Losses would not be confined to U. S. Steel's workers, but rather, would also include employees of ancillary support businesses, stores and suppliers that depend on the business of U. S. Steel, its workers, and their families.⁵¹ This, in turn, would exacerbate the depopulation that began decades ago in many communities and, in so doing, leave a trail of closed businesses and blight.

To avert this outcome, the U. S. Steel/Nippon Steel transaction must be completed. Nippon Steel's investment is **critical** to the survival of Mon Valley Works, as well as to U. S. Steel's corporate, administrative, and research presence in Southwestern Pennsylvania. Throughout the merger process, U. S. Steel has been transparent that the Nippon Steel acquisition is the **only** way to ensure that Mon Valley Works remains operational, and that U. S. Steel's headquarters remains in Pittsburgh.

Prior to the merger announcement, U. S. Steel had been steadily decreasing its steel production and planned to reduce production

⁵⁰ *See id.*

⁵¹ *See id.*; Parker Economic Impact Projection, *supra* note 30.

further.⁵² Due to persistent financial losses, in 2019 U. S. Steel began “cutting costs, idling older facilities, and investing in new technologies.”⁵³ As part of its strategy to reverse losses, U. S. Steel had been “shifting production from older, USW-represented facilities [such as Mon Valley Works] to more efficient electrical arc furnace (“EAF”) facilities.”⁵⁴ If the transaction does not close, U. S. Steel “will be forced to revert to its pre-Transaction strategy to be ‘better, not bigger’ by adding capacity and capabilities at its [Electric Arc Furnace] facilities in Arkansas while idling its blast furnace facilities.”⁵⁵ In this manner, prohibiting the transaction would “*accelerate* the domestic supply deficit and the erosion of [the U.S.’s] critical manufacturing base.”⁵⁶

⁵² App.577-78 (CFIUS Case No. 24-154: What happens if the transaction fails? at 1-2); App.523 (Encl. 1 – Resp. to Text of Dec. 14 Letter at 3).

⁵³ ECF Doc. 2098074 at 25 (Br. of Pet’rs at 14); *see also* App.561 (Encl. 2 – Resp. to Annex of Dec. 14 Letter at 28 “the only way U.S. Steel has remained profitable in the last five years is by *reducing* production capacity and shifting production capacity”).

⁵⁴ App.521 (Encl. 1 – Resp. to Text of Dec. 14 Letter at 1).

⁵⁵ App.521, 527, 531 (*id.* at 1, 7, 11); *see also* App. 528 (*id.* at 8), App.551-52, 561, 565, 568 (Encl. 2 – Resp. to Annex of Dec. 14 Letter at 18-19, 28, 32, 35); App.577 (CFIUS Case No. 24-154: What happens if the transaction fails? at 1).

⁵⁶ App.527 (Encl. 1 – Resp. to Text of Dec. 14 Letter at 7).

In turn, this would inevitably spell the end for Mon Valley Works and U. S. Steel's Pittsburgh headquarters. As U. S. Steel emphasized in a December 14, 2024, submission to CFIUS:

In Pennsylvania, as U. S. Steel has previously advised the Committee, the prohibition of the Transaction would result in streamlining corporate-level expenditures by reducing headcount. And without the \$1 billion upgrade from Nippon Steel, the future of Mon Valley Works looks like those of U. S. Steel's other facilities that have closed. Without ongoing steelmaking operations in Pennsylvania, U. S. Steel would eventually move its headquarters elsewhere. ***These are not threats. This is the reality that U. S. Steel will confront if the Transaction is blocked...Without Nippon Steel, steelmaking in the Mon Valley has an expiration date.***⁵⁷

Conversely, U. S. Steel and Nippon Steel have committed to keeping steelmaking in the Mon Valley if the transaction is completed and have recognized that, “[w]ith Nippon Steel as a partner – sharing technology and expertise – U. S. Steel will be significantly better positioned to invest in integrated facilities like Mon Valley Works.”⁵⁸

Nippon Steel's investment is essential to the survival of Mon Valley Works. However, U. S. Steel does not have the financial resources to

⁵⁷ App.523-24 (*id.* at 3-4).

⁵⁸ App.525 (*id.* at 5).

make critical investments on its own and has acknowledged that, absent Nippon Steel’s substantial financial and technological investments, “Mon Valley Works will not receive vitally needed investment to ensure its long-term viability.”⁵⁹ For example, it is inevitable that U. S. Steel will not be able to modernize the Mon Valley Works hot strip mill in West Mifflin, Pennsylvania.⁶⁰ This would directly result in the closure of the hot strip mill and the loss of 2,700 union jobs.⁶¹ It would also result in U. S. Steel’s inability to supply the oil and gas industry and Detroit automobile manufacturers – which to the *Amici* is critical. In turn, this could damage the oil and gas and auto industries and raise domestic steel pricing. In contrast, the transaction with Nippon Steel “could ultimately stabilize prices for critical metal products.”⁶²

⁵⁹ *Id.*

⁶⁰ App.337 (Email to Andrew Fair Re : CFIUS Case 24-088: Resp. to Risk Letter of Aug. 31, 2024 at 6).

⁶¹ *Id.*

⁶² See Grant Schwab and Kalea Hall, The Detroit News, “Here’s Why the Auto Industry Supports a U.S. Steel Sale to Japan’s Nippon Steel” (Sept. 16, 2024), available at <https://www.detroitnews.com/story/business/autos/2024/09/16/why-automakers-support-us-steel-sale-to-japanese-nippon-steel-2024/75188941007>; Metal Miner, OilPrice.com, “Nippon Steel’s Investment Could Revitalize U.S. Steel Industry” (Sept. 12, 2024), <https://oilprice.com/Metals/Commodities/Nippon-Steels-Investment->

If the U. S. Steel/Nippon Steel transaction is not completed, activist investors also threaten U. S. Steel's ongoing Pennsylvania operations. U. S. Steel has advised the government under penalty of perjury that, "[i]n the absence of a transaction, U. S. Steel expects that it will be forced by investors to return any 'excess' capital to stockholders via dividends and/or buybacks, further limiting the cash and liquidity available to fund new investments."⁶³ According to U. S. Steel, activist investors "have no concern for the long-term viability of U. S. Steel and will be glad to see U. S. Steel scrapped for parts, which is the most likely outcome of another sale process, given that Nippon Steel was the only buyer capable of keeping U. S. Steel together."⁶⁴ This outcome – the scrapping for parts of a company that has been integral to Southwestern Pennsylvania for generations – would be catastrophic to *Amici's* business communities and do nothing to further national security interests.

Could-Revitalize-US-Steel-Industry.html; United States Steel,
Fortifying American Energy,
<https://www.ussteel.com/customers/solutions/energy>.

⁶³ App.522 (Encl. 1 – Resp. to Text of Dec. 14 Letter at 2).

⁶⁴ App.562, 574 (Encl. 2 – Resp. to Annex of Dec. 14 Letter at 29, 41).

CONCLUSION

For the reasons set forth herein, as well as those set forth in Petitioners' Petition for Review and Brief, *Amici* respectfully request that this Court grant Petitioners' Petition for Review, vacate President Biden's order blocking the U. S. Steel/Nippon Steel transaction and CFIUS's referral of the transaction to President Biden, remand the matter for reconsideration in accordance with a proper application of controlling legal standards, and grant other further relief as appropriate.

Respectfully submitted,

February 10, 2025

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because it contains 6,479 words excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and D.C. Circuit Rule 32(e)(1).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirement of Rule 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook 14-point type for text and footnotes.

/s/ William P. Lewis

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2025, I filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system, which will serve all counsel of record.

/s/ William P. Lewis